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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/764,757	01/26/2004	Joseph J. Franzino		8773

7590

06/22/2005

Patrick J. Walsh, Esq.  
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EXAMINER

POPOVICS, ROBERT J

ART UNIT

PAPER NUMBER

1724

DATE MAILED: 06/22/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 10/764,757	Applicant(s) FRANZINO ET AL.	
	Examiner Robert J. Popovics	Art Unit 1724	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 10/21/04 (New Drawings).
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-7 is/are pending in the application.
- 4a) Of the above claim(s) 5-7 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Claim Objections***

It is requested that Applicants submit the claims in the format specified at 37 CFR

1.75(i).

### ***Election/Restrictions***

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-4, drawn to an Apparatus for Cleaning Cooling Tower Basins, classified in class 210, subclass 241.
- II. Claims 5-6, drawn to a Method of Cleaning Recirculating Water in a Cooling Tower Basin, classified in class 210, subclass 767.
- III. Claim 7, drawn to a Tool for Attachment to a Vacuum Hose, classified in class 15, subclass 246.2.

The inventions are distinct, each from the other because of the following reasons:

Inventions of Group II and Groups I and III are related as process and apparatus for its practice. The inventions are distinct if it can be shown that either: (1) the process as claimed can be practiced by another materially different apparatus or by hand, or (2) the apparatus as claimed can be used to practice another and materially different process. (MPEP § 806.05(e)). In this case the apparatus as claimed can be used to practice another and materially different process, such as removal of debris from an aquarium or a septic tank.

Inventions of Group I and Group III are related as combination and subcombination.

Inventions in this relationship are distinct if it can be shown that (1) the combination as claimed does not require the particulars of the subcombination as claimed for patentability, and (2) that

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the subcombination has utility by itself or in other combinations (MPEP § 806.05(c)). In the instant case, the combination as claimed does not require the particulars of the subcombination as claimed because the “tool” of Group I does not have to be a “prism” as specified in Group III. Moreover, combination claims 1-3 of Group I do not appear to recite any details of the “tool” of Group III. These are considered evidence that the subcombination of Group III is not essential to the invention. The subcombination has separate utility such as use with a vacuum cleaner. If combination claims 1-3 are subsequently found to be unallowable, the question of rejoinder of the inventions restricted must be considered.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

Because these inventions are distinct for the reasons given above and the search required for Group II is not required for Groups I and III, restriction for examination purposes as indicated is proper.

During a telephone conversation with Mr. Patrick Walsh on June 20, 2005 a provisional election was made without traverse to prosecute the invention of Group I, claims 1-4. Affirmation of this election must be made by applicant in replying to this Office action. Claims 5-7 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the

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application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

***Claim Rejections - 35 USC § 103***

Claims 1-3 rejected under 35 U.S.C. 103(a) as being unpatentable over the combined teachings of Carlilie (US 6,309,169) and Simpson (US 5,611,920). Independent claims 1 and 3 essentially differ from Carlilie by specifying a strainer. In this regard, strainers, to protect pumps, are notoriously well known in the art. Simpson provides an example of a pump upstream of a pump intake:

Just inward of valve 64 in the main flow way is a strainer 66 that keeps solids that may be present in the water from entering the inner parts of the generator 22.

Detailed Description Text - DETX (18):

The generator has its own pump 68, in the main flow way, preferably near the upstream end. In this case, the pump is shown as being connected into the main flow way just downstream of strainer 66, and powered by its own motor 70.

It is submitted that it would have been obvious to employ a strainer upstream of the pump intake to prevent larger debris from damaging or clogging the pump. There may be other minor differences between the claimed invention and the combination of references as applied above, such as, the specific orientation of the pump. However, such is not seen to rise to the level of a patentable distinction, as they constitute obvious matters of choice in design.

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Claims 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over the combined teachings of Carlilie (US 6,309,169) and Simpson (US 5,611,920) and Aleman (US 4,683,067).

Independent claim 4 essentially differ from Carlilie by specifying a strainer and a debris collection tool. In this regard, strainers, to protect pumps, are notoriously well known in the art.

Simpson provides an example of a pump upstream of a pump intake:

Just inward of valve 64 in the main flow way is a strainer 66 that keeps solids that may be present in the water from entering the inner parts of the generator 22.

Detailed Description Text - DETX (18):

The generator has its own pump 68, in the main flow way, preferably near the upstream end. In this case, the pump is shown as being connected into the main flow way just downstream of strainer 66, and powered by its own motor 70.

It is submitted that it would have been obvious to employ a strainer upstream of the pump intake to prevent larger debris from damaging or clogging the pump. Alemam discloses the use of a suction wand 19. In view of the Aleman disclosure, it would have been obvious to employ a suction wand, in order to control/select the fluids to be removed. There may be other minor differences between the claimed invention and the combination of references as applied above, such as, the specific orientation of the pump. However, such is not seen to rise to the level of a patentable distinction, as they constitute obvious matters of choice in design.

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***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert J. Popovics whose telephone number is (571) 272-1164. The examiner can normally be reached on Monday through Friday between 2:00 PM and 6:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Duane Smith can be reached on (571) 272-1166. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read 'R. J. Popovics', with a large, stylized flourish underneath.

Robert James Popovics  
Primary Examiner  
Art Unit 1724

June 20, 2005